

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Department of Transportation
Petitioner,

v.

Norfolk Southern Railway Company, City of Springfield,
Springfield Park District and Illinois Department of Natural
Resources,
Respondents.

T06-0016

Petition for an Order granting authority to (1) construct a new highway overpass structure carrying MacArthur Boulevard Extension over railroad tracks of the Norfolk Southern Railway Company located at Railroad Mile Post DH-418.25 and; (2) construct a new pedestrian overpass structure carrying the Interurban Bike Trail over railroad tracks of the Norfolk Southern Railway Company located at Railroad Mile Post DH-418.23 and; (3) to close the West Grand Avenue Grade Crossing (DOT/AAR 915 859F; Railroad Mile Post DH-418.07) located near the new structures all at a point near the southern edge of the City of Springfield, Sangamon County, Illinois.

ORDER

By the Commission:

On March 30, 2006, the Illinois Department of Transportation ("Department") filed with the Illinois Commerce Commission ("the Commission") a verified Petition in the above captioned matter naming as respondents Norfolk Southern Railway Company ("NSRR"), Springfield Park District ("District"), and the Illinois Department of Natural Resources ("IDNR"). The City of Springfield ("City") was shown as a Co-Petitioner.

On April 17, 2006, the Department presented an Amended Petition in the above captioned matter naming the City as an additional Respondent, and deleting the reference to the City as a Petitioner.

Under the Illinois Commercial Transportation Law 625 ILCS 5/18c-7401 ("ICTL"), Commission authorization is required before a grade separation may be constructed, reconstructed or replaced. In the Petition, the Department seeks authorization from the Commission to construct a new highway overpass structure to carry the proposed MacArthur Boulevard Extension over tracks owned and/or operated by the NSRR, construct a new pedestrian overpass structure carrying the realigned Interurban Bike Trail over the NSRR, and to close the West Grand Avenue grade crossing (DOT/AAR #915 859F), all of which is located to the south of the City of Springfield, Sangamon County near Interstate 72.

Pursuant to due notice given in accordance with the law and rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's Springfield office on April 17, 2006. The Petitioner appeared by counsel and presented the testimony of 3 witnesses: James Moll, Project Manager and Assistant Vice President for Hanson Professional Services; Tom Flattery, representing the Illinois Department of Natural Resources, and Michael Martin, Agreements Technician, for the Department's Bureau of Design & Environment. Appearances were also made by Ellen Schanzle-Haskins, Chief Counsel for the Illinois Department of Transportation; Tracy Johansson, Asst. Corporation Counsel for the City of Springfield; Neil F. Flynn, Attorney representing the NSRR, and Michael E. Stead, Rail Safety Program Administrator, representing the Staff of the Commission's Transportation Bureau.

As indicated, the Department in their Petition requested authority to construct the two (2) new grade separation structures carrying the proposed new highway overpass structure and the MacArthur Boulevard Extension and the Interurban Bike Trail over the tracks of the NSRR, and close the existing West Grand Avenue grade crossing of the NSRR's track. Mr. James Moll testified that the proposed MacArthur Boulevard Extension and the new pedestrian overpass structures are part of a larger project to extend MacArthur Boulevard from the existing Wabash Avenue/MacArthur Boulevard intersection southward to Interstate Highway 72, where a new interchange is planned. The total cost of the MacArthur Boulevard Extension project is estimated to be \$40 million. Mr. Moll indicated that the new highway structure is required to carry the MacArthur Boulevard Extension over the NSRR track. Mr. Moll also indicated that the new pedestrian structure is needed to carry the realigned Interurban Bike Trail over the NSRR. Mr. Moll also testified that the existing West Grand Avenue highway-rail grade crossing of the NSRR's track would not be necessary following completion of the new pedestrian structure and realignment of the Interurban Bike Trail. Mr. Moll indicated that closure of the West Grand Avenue crossing was in keeping with requirements of a previous Commission Order, T91-0072¹, which authorized construction of the crossing. Mr. Moll acknowledged that to the best of his knowledge the West Grand Avenue roadway was under Township jurisdiction (Capitol Township). He was unsure which method would be used to close the crossing. Mr. Moll's testimony established that construction of the proposed structures and closure of the West Grand crossing constitutes a safety benefit to the general public.

Mr. Tom Flattery testified that the Illinois Department of Natural Resources has committed to pay \$100,000 toward the realignment of the Interurban Bike Trail and construction of the new pedestrian bridge. Mr. Flattery indicated that the donation is part of IDNR's responsibility to see that the Interurban Bike Trail remains intact and contiguous for all users.

¹T91-0072, dated March 10, 1992, authorized construction of the West Grand Avenue crossing. Finding 5 of the Order indicates *"this crossing shall be considered temporary in nature until such time as a grade separation can be constructed over the NS track, or until a road is built which connects the West Grand Avenue crossing to the north with MacArthur Blvd. in Springfield, Illinois."*

Michael Martin testified that a Project Agreement was drafted and circulated to all parties for review and comment. All parties have agreed in principle to the terms and conditions of the Project Agreement. Mr. Martin also testified that the Department had submitted a Draft Order (Petitioner's Exhibit 9), which had been reviewed and agreed to by all parties including Staff. Staff will use the Petitioner's Draft Order to prepare an Order in this matter.

The Department proposes to construct a new highway overpass structure carrying the MacArthur Boulevard Extension over NSRR's track, to construct a new pedestrian overpass structure carrying the Interurban Bike Trail over the NSRR's track, all at a point near NSRR mile post DH-418.23, and, to close the West Grand Avenue grade crossing (DOT/AAR #915 859F, railroad milepost 418.07). The Department is seeking a financial contribution from the City, NSRR, IDNR and assistance from the Grade Crossing Protection Fund ("GCPF") to pay for the two (2) new structures. The Department's schedule calls for a bid letting on the proposed project to be in August 2006, and completion of the project by the end of calendar year 2009. The designs of the new structures have been approved by the NSRR and meet all of the requirements of 92 Ill. Adm. Code Part 1500. Commission Staff supported the Department's Petition and the proposed division of costs for the Project.

No party contested the Petitioner's requests. The Administrative Law Judge marked the matter "Heard and Taken" on April 17, 2006.

The Commission, having given due consideration to the entire record herein, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The recitals of fact set forth in the prefatory portion of this Order are supported by the evidence and are adopted as findings of fact;
- (3) Public safety requires that the work proposed in the Petition and set forth in the prefatory portion of this Order be completed as set forth in Petitioners Exhibits 1, 2, 3, 4, 5, 6, 7, and 9 admitted into evidence;
- (4) The cost of the project should be divided as follows:

- DIVISION OF COST -

Work Item	Est. Cost	Department³	GCPF¹	City⁵	NSRR²	IDNR⁴
Highway Overpass Structure					(5%)	
Construction	\$ 10,734,000	\$ 5,367,000	\$ 3,713,000 ¹	\$ 1,511,000	\$ 143,000	-
Land Acquisition	\$ 970,000	\$ 970,000	-	-	-	-
Utility Relocation	\$ 87,000	\$ 87,000	-	-	-	-
City CCB Credit	-	\$ 112,000	-	\$ (112,000)	-	-
Engineering PE 2	\$ 800,000	\$ 800,000	-	-	-	-
Engineering PE 3	\$ 1,000,000	\$ 500,000	-	\$ 500,000	-	-
Subtotal	\$ 13,591,000	\$ 7,836,000	\$ 3,713,000	\$ 1,899,000	\$ 143,000	\$ 0
Interurban Trail, Pedestrian Overpass Structure and Closure of West Grand						
Construction	\$ 1,351,000	\$ 483,000	\$ 768,000	-	-	\$ 100,000
Land Acquisition	\$ 86,000	\$ 86,000	-	-	-	-
City CCB Credit	-	\$ 18,000	-	\$ (18,000)	-	-
Utility Relocation	-	-	-	-	-	-
Engineering PE 2	\$ 80,000	\$ 80,000	-	-	-	-
Engineering PE 3	\$ 120,000	\$ 120,000	-	-	-	-
Crossing Removal - West Grand						
Crossing	No Estimate	-	-	-	100%	-
Pavement Removal - West Grand	No Estimate	100%	-	-	-	-
Subtotal	\$ 1,637,000	\$ 787,000	\$ 768,000	\$ (18,000)		\$ 100,000
Subtotal	\$ 15,228,000	\$ 8,623,000	\$ 4,481,000	\$ 1,881,000	\$ 143,000	\$ 100,000
Credits		\$ 1,316,000⁶		\$(1,316,000)⁶		
Totals	\$15,228,000	\$ 9,939,000	\$ 4,481,000	\$ 565,000	\$ 143,000	\$ 100,000

Notes:

¹ Total Grade Crossing Protection Fund (GCPF) assistance for the MacArthur Boulevard Extension Overpass Structure not to exceed \$3,713,000, based upon \$6,189,000 in project costs eligible for GCPF assistance; Total GCPF assistance for the Interurban Trail Pedestrian Overpass Structure not to exceed \$768,000. Any eligible project costs above the estimated amount will be divided between the parties upon submittal and review of evidence to support the additional cost and subject to approval by the Commission. GCPF assistance shall be limited to \$2,481,000 in state fiscal year 2006 (FY 06) and \$2,000,000 in FY 08.

² NSRR participation shall be limited to a 5% contribution toward estimated eligible costs of \$2,864,968; NSRR shall be required to make a lump sum payment to the Department upon receipt of a notice of project completion.

³ Since federal funding is being utilized for the grade separation reconstruction, all such work shall be covered by appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991. Contractor liability insurance will be required.

4. The Illinois Department of Natural Resources has agreed to contribute \$100,000 toward the improvement of the Interurban Bike Trail from funds which are under the control of the Department and are displayed as a separate line item for informational purposes only. If for any reason these funds are not made available, the Department would assume full responsibility for this contribution; The Springfield Park District shall own, have jurisdiction of, and be responsible for all future maintenance of the new Interurban Bike Trail pedestrian overpass structure, approaches thereto and all other trail facilities;
5. The City of Springfield shall own, have jurisdiction of, and be responsible for all future maintenance of the new MacArthur Boulevard highway overpass structure, the highway approaches and all other highway facilities located north of the north ramps of Interstate 72.
6. The Department has agreed to issue the City of Springfield a credit in the amount of \$1,316,000 for work associated with the MacArthur Boulevard/Interstate 72 Interchange; this work is not subject to Commission approval.

- (5) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions;
- (6) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
- (7) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders;
- (8) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe;
- (9) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act

on a pleading prior to the deadline means the originally ordered completion date remains in effect;

- (10) The Department shall provide sufficient documentation for all bills submitted for reimbursement from the GCPF for the work specified in the prefatory portion and Section 4 of this Order.

IT IS THEREFORE ORDERED that the State of Illinois, Illinois Department of Transportation is hereby authorized and directed to construct a new highway overpass structure carrying the MacArthur Boulevard Extension over Norfolk Southern Railway Company's tracks, and to construct a new pedestrian overpass structure carrying the Interurban Bike Trail over the Norfolk Southern Railway Company's tracks, all at a point near railroad mile post DH-418.25.

IT IS FURTHER ORDERED that after the MacArthur Boulevard Extension highway overpass structure and the Interurban Bike Trail pedestrian overpass structure are completed and open to traffic the State of Illinois, Illinois Department of Transportation is hereby authorized and directed to close, abolish and barricade the West Grand Avenue highway-rail grade crossing (DOT/AAR #915 859F, railroad milepost 418.07) of the Norfolk Southern Railway Company's track by removing the pavement on each side of the grade crossing and installing permanent Type III barricades at the Norfolk Southern Railway Company's right of way limits.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company is hereby authorized and directed to remove the grade crossing surface and all signal equipment at the West Grand Avenue highway-rail grade crossing upon closure of the crossing by the Illinois Department of Transportation.

IT IS FURTHER ORDERED that the City of Springfield shall own, have jurisdiction of, and be responsible for all future maintenance of the new MacArthur Boulevard highway overpass structure, the highway approaches, and all other highway facilities located north of the north ramps of Interstate 72.

IT IS FURTHER ORDERED that the Springfield Park District shall own, have jurisdiction of, and be responsible for all future maintenance of the new Interurban Bike Trail pedestrian overpass structure, approaches thereto, and all other trail facilities.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall continue to be responsible for maintaining the existing ballast, ties, rail and all other railroad facilities.

IT IS FURTHER ORDERED that total assistance from the Grade Crossing Protection Fund of the Motor Fuel Tax Law authorized for this project shall be limited to \$4,481,000. Grade Crossing Protection Fund assistance shall be limited to \$2,481,000 in state fiscal year 2006 (FY 06) and \$2,000,000 in FY 08.

IT IS FURTHER ORDERED that \$2,481,000 in Grade Crossing Protection Fund assistance shall be authorized with this Order. No further amounts can be paid from the Grade Crossing Protection Fund by the Illinois Department of Transportation until further Order of the Commission. The Petitioner shall be required to submit a Supplemental Petition requesting the remainder of the Grade Crossing Protection Fund assistance. Any Supplemental Petition submitted shall include evidence to prove that previous contributions from the Grade Crossing Protection Fund have been expended.

IT IS FURTHER ORDERED that the Illinois Department of Transportation is hereby required and directed to proceed immediately in performing the work set forth hereinabove and shall complete the work within 48 months from the date of this Order.

IT IS FURTHER ORDERED that since federal funding is being utilized for the grade separation reconstruction, all such work shall be covered by appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991. Contractor liability insurance will be required.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Section 4 herein above.

IT IS FURTHER ORDERED that all of the contractor's pay estimates for the work described in this Order eligible for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Department's District 6 office, located at 126 West Ash Street, Springfield, IL, 62704. The Department shall send a copy of all contractor invoices to the Director of Processing and Information, Transportation Bureau of the Commission. The final contractor invoice for expenditures from each party shall be clearly marked "Final Invoice". All invoices shall be submitted no later than twelve (12) months from the completion date specified in the Commission Order approving this Agreement. The Department shall not obligate any assistance from the Grade Crossing Protection Fund for the cost of proposed improvements described in this Order without prior approval by the Commission. The Commission shall, at the end of the 12th month from the completion date specified in the Commission Order approving this Agreement or any Supplemental Order(s) issued for this project, notify the Department to de-obligate all residual funds accountable for this project. Notification may be by regular mail, electronic mail, facsimile, or phone.

IT IS FURTHER ORDERED that all contractor pay estimates for all work specified in Section 2 of this Agreement and authorized by an Order of the Commission, shall be paid in accordance with Department's the applicable articles of Section 109 of the State's Standard Specifications for Road and Bridge Construction.

IT IS FURTHER ORDERED the Illinois Department of Transportation shall, at six (6) month intervals from the date of Commission Order, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report, attached hereto, stating the progress it has made toward completion of the work

herein required. Each Project Status Report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the Department's Project Manager.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall within five (5) days of the completion of the work herein required, submit a completely updated United States Department of Transportation Inventory Form (#6180.71) to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that the Illinois Department of Transportation be, and it is hereby required and directed to submit a Project Completion Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of it has been completed. The Project Completion Report shall be submitted within five (5) days after the project completion date.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall be required to submit a Project Completion Report to all parties, stating that the work herein required of it has been completed. The Project Completion Report shall be submitted within five (5) days after the project completion date.

IT IS FURTHER ORDERED that the Norfolk Southern Railway shall submit a lump sum payment of \$143,000 to the Illinois Department of Transportation within ten (10) days from receipt of the Project Completion Report.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that requests For Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension

of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 17th day of May 2006.

JUDGE	<i>[Signature]</i>
SECTION CHIEF	<i>[Signature]</i>
ORDERS SUPERVISOR	

Charles E. Boff

Chairman